IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8321 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUKUND CONSTRUCTION CO. - Petitioner(s)
Versus
REGIONAL P.F COMMISSIONER - Respondent(s)

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Appearance :
MR DJ BHATT for Petitioner(s) : 1,MR HG PATIL for Petitioner(s) : 1,
MR NIRAL R MEHTA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 23/07/2007

ORAL JUDGMENT

Shri D.J. Bhatt, learned counsel for the petitioner; Shri Niral R. Mehta, learned counsel for the respondent.

2. M/s. Mukund Construction Company, somewhere in the year 1979, in accordance with sub-section [4] of Section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, made an application to the Commissioner, Provident Funds that the benefits flowing from the Scheme be admitted to them and the industry be included within the Scheme of the Provident Fund. Unfortunately, the authorities of the Provident Funds, which were required to act smooth and swift, slept over the application of the applicant-present petitioner. On 11.5.79, the petitioner sent reminders to the Provident Funds Commissioner for early disposal of the application; on 30th January, 1980, the department sent a letter to the petitioner informing them that the application submitted by the petitioner was under scrutiny and consideration. The application came to be decided 15.7.82. The department clearly ordered that the industry would be included in the Scheme with retrospective effect from 30th January, 1980.

3. In accordance with the Scheme and the law, the department asked the employer to make deposits of the amount known as contribution of employer and contribution made by the employee. Within the reasonable period, rather, without any delay, the petitioner deposited their 50% contribution but the employees did not do it.

4. It appears that some negotiations were going on between the employer and the employees, the employees were trying that further 25% should be paid by the employer and the burden to the extent of 25% only be saddled upon the employees. The employer, as a prudent and good employer deposited that 25% also but however, there was delay on the part of the employees in making their contribution. Somewhere on 17.4.90, the department came out of its hibernation and deep sleep and issued a notice to the petitioner that as there was delay in making deposits, amount of interest and other damages be paid to the department. They claimed the amount for the period between 30.1.80 and November, 1988. The petitioner sent a reply and submitted that

firstly they were not liable to pay any interest, because, there was no delay on their part; secondly, the Scheme could not be applied with retrospective effect; thirdly the total contribution was deposited with the department in the year 1984, therefore, demand for the period 1984 to 1988 was absolutely illegal and unjustified. However, the department disagreed with the submission and the defence made/raised by the petitioner and passed a final order on 22.10.91. Being aggrieved by the said order, the petitioner is now before this Court.

5. Shri D.J. Bhatt, learned counsel for the petitioner submits that in absence of any lapse on the part of the employer, no direction for recovery of the interest and other damages could be issued against the petitioner. He submitted that retrospective operation of the Scheme and inclusion of the industry in the Scheme would not give any additional benefit to the department, because, the department cannot be allowed to take advantage of its own wrong and the delay caused by it. He also submitted that

in accordance with sub-section [4] of Section 1 of the Act, liability of the employer would be only from the date of the agreement or the date so provided in the agreement. He submitted that the order of the department deserves to be quashed.

6. Shri Niral M. Mehta, learned counsel for the respondent-department, on the other hand, placing his strong reliance upon sub-section [4] of Section 1 read with Section 7A and 14B of the Act submitted that the department is required to provide certain benefits to the employees of an industry admitted to the Scheme. Under the circumstances, the department is entitled to recover interest and damages. He also submitted that the liability to make deposits of the contribution lies on the employer and if the employer fails in deducting the amount from the wages of the employees, the employer has to thank himself. He also submitted that the department was kind enough in not making the Scheme applicable from the date of the application. He, however, submitted that in

absence of any lapse on the part of the department, the petitioner cannot get any benefit.

7. Sub-section [2] and sub-section [3] of Section 1 of the Act provide for inclusion of a particular industry as provided in the Scheme or as notified by the Central Government. Sub-section [4] of Section 1 provides that any industry other than the industry included in sub-section [2] or sub-section [3] may make an application to the department for their inclusion in the Scheme for extension of the benefits to the employees. Sub-section [4] clothes the authority with the jurisdiction to make provision of the Scheme applicable to an industry either from the date of the agreement or from the date as provided in the agreement. Section 1 sub-section [4] or any other provisions of law does not provide that the Scheme can be enforced with retrospective effect.

8. It is to be seen from the Scheme of the Act that the employer is liable to pay his contribution and is obliged to collect the

contribution of the employee and deposit the same with the department if industry is included in the Scheme. As a legal proposition, it cannot be condemned or challenged that so long as a particular industry is not included in the Scheme, employer would not be entitled to recover any amount from the employee in the name of his contribution. In a given case, if the employer proposes to recover an amount under the name of the employee's contribution, such employee can always prosecute the employer on the ground that the employer is engaged in the unfair trade practices and is making deductions without any authority of law. When the law provides that the salary/wages are to be paid in full and only permissible legal deductions are to be made, then, any deduction which is not legally permissible cannot be made until the industry is included in the Scheme. For the present case it would be up to 15.7.82, that is, the date of the order directing inclusion of the petitioner in the Scheme. The employer was not entitled to recover any amount in the name of

the employees' contribution nor was obliged to collect it from the employees nor was he required to deposit the said amount with the department.

9. In the present case, undisputedly, within the period as provided under the law and as directed by the Commissioner, Provident Funds, the petitioner made deposits with the department. So far as the question of recovery of the contribution of the employees was concerned, everybody knows that it would always be a herculean task to recover money from an employee which he has already pocketed. The amount could only be recovered from the future salary or could be received if employees were ready and willing to make deposits. In the present case, the petitioner as an honest employer, even conceded to the demand of the employees by making further payment of 25%. Good gesture on the part of the employer was taken to be a weakness of the employer and almost after six years of the deposits, the department came out of its hibernation. Nobody says as to why right

from 1979 to 1982, orders could not be passed directing inclusion of the industry into the Scheme nor anybody says that why from 1984 to 1990, the department did not demand money nor anybody says that if the money was deposited in the year 1984, why department would be entitled to recover interest and damages for the period between 1984 and 1988. If these were not the lapses on the part of the department and its vigilant officers, what else would it be. So far as the submission of Mr. Mehta that the department would be providing some benefits or additional benefits to the employees therefore they are entitled to interest and damages, is concerned, I must immediately reject the said argument by observing that benevolence cannot be at the cost of others. The department can not coerce or pressurize any industry to make some payment which such industry is not liable to pay. When office of the Commissioner, Provident Funds has been created and the Act has been brought into existence with laudable object, then, the object should not be

forgotten. The object of the Act is to provide certain benefits to the employees, object of the Act is not to coerce the people to pay to the department so that expenses of the department are met and illegal inaction on the part of the department stands protected under the guise of legal powers of the department.

10. The department, in the present case, was absolutely unjustified in issuing a direction to the petitioner for making payment of interest and damages.

11. Present is a case where exemplary costs should be awarded in favour of the petitioner and to provide an eye opener to the department that illegality in the department, if starts floating on the surface of the records, then, the Court of law would not excuse or exempt them. Officers of the department, if are appointed at the cost of the public or the public exchequer, then they are supposed to act in the manner which is known to law and not contrary to law.

12. The order dated 16.10.1991 [Annexure:F] issued

by the department is hereby quashed with costs amount to Rs. 20,000/- [Rupees Twenty Thousand only]. The costs to be paid by the department within six weeks from today. In case, the costs are not paid within six weeks from today, it will amount to disobedience of this order and the officers of the department shall be exposing themselves to a serious risk, apart from paying interest at the rate of 15% per annum from the date of non-payment.

13. The petition is allowed. Rule is made absolute accordingly.

[R.S. GARG, J.]

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